

**Nursing and Midwifery Council
Fitness to Practise Committee**

Restoration Hearing

Thursday 10 October 2024

Virtual Hearing

Name of Applicant: Ester Ade Fabowale

NMC PIN 93B00400

Part(s) of the register: Registered Nurse – RN1 (February 1993)
Registered Midwife – RM (April 1997)

Relevant Location: London

Panel members: Vicki Wells (Chair, Registrant member)
Sarah Fleming (Registrant member)
Clare Taggart (Lay member)

Legal Assessor: Lucia Whittle-Martin

Hearings Coordinator: Monsur Ali

Nursing and Midwifery Council: Represented by Roy Donnelly, Case Presenter

Ms Fabowale: Present and represented by Catherine Stock,
Counsel

Outcome Application granted with a requirement for
successful completion of a Return to Practice
course

Determination of application for Restoration to the Register:

This is a hearing of your second application for restoration to the Nursing and Midwifery Council (NMC) Register. The first application for restoration was considered on 18 May 2022 and was refused.

A panel of the Conduct and Competence Committee (CCC) directed on 21 May 2014 that your name be removed from the Register based on its findings with regard to the facts of your case and your impairment. You appealed against that decision to the High Court by letter, which was dated 27 May 2014, and filed an amended grounds of appeal on 5 October 2015. It was conceded by the NMC upon considering the amended grounds of appeal that the approach taken by the CCC to misconduct, impairment and sanction was flawed. The High Court ordered that the CCC's decisions and factual findings in relation to all of the charges considered at the substantive hearing on 19 to 21 May 2014 were upheld.

By a consent order dated 30 November 2015, the High Court ordered that the CCC's decisions in relation to misconduct, impairment and sanction were quashed. The case was remitted to a different panel for a rehearing, to consider the matters of misconduct, impairment and sanction. This was considered by a CCC panel on 23 to 24 March 2016 and it directed on 24 March 2016 that your name be removed from the Register based on its findings with regard to the facts of your case and your impairment. This striking-off order was effective from 30 April 2016.

This application is made by you in accordance with Article 33 of the Nursing and Midwifery Order 2001 (the Order), as at least five years have now elapsed since the date of the striking-off order.

At this hearing the panel may refuse your application or it may grant your application unconditionally. It may grant your application subject to your satisfying the requirements of Article 19(3) and it may make a conditions of practice order.

The panel has considered your application for restoration to the Council's Register.

Background as taken from the previous restoration application

'At the time of the incidents you were enrolled on a Bachelor of Science (BSc) Midwifery Practice pathway course through the University of West London (the University) which you commenced in 2007. You were required to submit an assignment for a compulsory module entitled 'Learning and Managing a Practice Based Change' in October 2012. You failed the first attempt but you were invited to resubmit a second attempt. You submitted a second assignment on 23 October 2012.

The University uses anti-plagiarism software called Turnitin. This software scans a student's submitted work for similarities to other published work or previous submitted assignments contained in the database. Turnitin is a nationwide system which is implemented by a number of universities. When work is submitted via Turnitin, a database of submitted work is developed. Therefore, the data pool is always growing and improving. Any cohort in any university using Turnitin will contribute to building up the database by submitting their work.

The panel heard that your assignment had a 60% similarity to another student's assignment that was submitted in September 2012 and which was identified as such through Turnitin. By reason of the high degree of similarity to another student's work, you were referred to the university academic registry department for an allegation of plagiarism.

The matter went before a disciplinary panel on 12 December 2012. The allegation of plagiarism was upheld and the sanction applied was that you would be unable to re-sit the module. Therefore, you were not able to complete your degree as it was a compulsory module. Following this investigation, it came to light on a review of your academic history that you had been investigated for plagiarism in 2009 and had received a written warning.

This written warning related to an incident which occurred in or about June 2009 for a module you undertook on 'Women and Mental Health and Childbearing'. It

was alleged that you had submitted a plagiarised assignment. The matter proceeded to a disciplinary hearing which was heard on 15 June 2010. The allegation of plagiarism was upheld and by way of penalty, you received a written warning that was to remain on your file for the duration of your studies. In addition, the University retained the right to refer you for assistance with your study skills/referencing techniques. Furthermore, you were denied the opportunity to re-sit the assessment element and therefore you failed the module. The module would have to be retaken. No penalties would apply to the new module.

The panel at the substantive hearing, considered the following charges:

'That you, whilst a registered midwife employed by Imperial College Healthcare NHS Trust and undertaking a post registration BSc midwifery practice pathway at University of West London:

1. In or around June 2009, submitted a plagiarised assignment to the University of West London;

2. On 23 October 2012, submitted a plagiarised assignment to the University of West London;

3. Your actions at charges 1 and 2 above were dishonest.

And in light of the above, your fitness to practise is impaired by your misconduct.'

You attended the original substantive hearing and made admissions to charges 1 and 2. The panel at the substantive hearing on 23 to 24 March 2016 found all of the charges proved.

The substantive hearing panel determined the following with regard to impairment:

'The panel kept in mind that the NMC has defined fitness to practise as a registrant's suitability to remain on the register without restriction.

When considering impairment, the panel took into account the guidance set out in Dame Janet Smith's Fifth Shipman Report and cited with approval by Mrs Justice Cox in the case of CHRE v NMC Grant [2011] EWHC 927 (Admin). In brief this was as follows:

"Do the panel's findings of fact in respect of the (nurse/midwife's) misconduct...show that her fitness to practise is impaired in the sense that she:

- a) has in the past acted and/or is liable in the future to act so as to put a patient(s) at unwarranted risk of harm; and/or*
- b) has in the past brought and/or is liable in the future to bring the profession into disrepute; and/or*
- c) has in the past breached and/or is liable in the future to breach one of the fundamental tenets of the profession*
- d) has in the past acted dishonestly and/or is liable to act dishonestly in the future."*

The panel also had regard to the case of Cohen v General Medical Council [2008] EWHC 581 (Admin) in which it was said that a significant consideration at the impairment stage is whether the conduct which led to the charge was easily remediable, that it had been remedied and that it was unlikely to be repeated, although such considerations carried less weight in non-clinical cases.

The panel considered that limbs b, c and d of the guidance in Grant were engaged in this case. In the panel's judgment your actions had brought the profession into disrepute by submitting a plagiarised assignment to the University. You had also breached a fundamental tenet of the profession

by acting dishonestly in submitting a plagiarised assignment to the University.

The panel then considered whether you are liable to repeat your past conduct in the future. In doing so, the panel had regard to matters of insight and remediation.

In relation to insight, the panel took into account your evidence both oral (at the facts stage during the substantive hearing on 19-21 May 2014) and documentary. It noted that you made admissions to some of the charges. During your evidence, you expressed remorse for your actions, gave assurances that your actions would not be repeated and appeared to take responsibility for your actions at the facts stage. However, all that was done at a time when you were denying that you had acted dishonestly. Since that finding of fact in May 2014 you have not provided any reflective piece or any other evidence to demonstrate insight into your dishonest behaviour.

The panel recognised that dishonesty was always difficult to remediate. However the starting point for any such remediation has to be acknowledgement of, reflection upon, and genuine insight into, the conduct in question. The charges found proved did not concern your clinical competencies but rather your behaviour. The panel received no further evidence from you to suggest that you had taken any steps to remedy your dishonest behaviour. Your representative emphasised, and the panel noted your account at the facts stage before the previous panel, that in both 2009 and 2012 you were experiencing significant personal difficulties in your life. However, you have not provided the panel with any evidence about how you would cope in the future if faced with similar difficulties. The panel also had no information as to your current circumstances.

The panel had regard to the testimonials dated 4 March 2015 and 2 March 2015. One of the testimonials was in fact just confirmation of the 18 month Diploma of Higher Education in midwifery training that you completed in 1995. The other testimonial related to your clinical practice prior to the substantive hearing in May 2014 and although the author referred to your honesty before that time, the panel noted that the author made no reference to knowing about the finding of dishonesty made against you in May 2014. The panel thus found these testimonials to be of limited assistance in deciding the question of current impairment.

The panel took into account that you have engaged with the NMC throughout these proceedings. Nonetheless, the facts found proved are serious, compounded by dishonesty and an absence of evidence of insight and remediation into your dishonesty.

The panel concluded in all the circumstances that it could not be satisfied that there was no risk of repetition. The panel concluded that, on the basis of the information currently available, you are liable to bring the professions into disrepute, breach a fundamental tenet and act dishonestly in the future.

The panel went on to ask itself whether the need to uphold proper professional standards and public confidence in the profession would be undermined if a finding of impairment of fitness to practise was not made in the circumstances of this case. Given the fact that your case involves a breach of a fundamental tenet of the profession and/or dishonesty, the panel had no doubt that it would be so undermined, and that a finding of impairment was necessary in the public interest.

Accordingly, the panel determined that your fitness to practise is currently impaired by reason of your misconduct.'

The substantive panel went on to determine the following with regard to sanction:

'The panel first considered taking no further action but decided that the misconduct in this case was too serious for this to be an appropriate sanction. The panel had regard to its findings that there is a risk that you would repeat your dishonest behaviour. Taking no further action would not protect the public against such a risk. In addition, given the gravity of the misconduct, which included dishonesty, taking no further action would not satisfy the public interest in the maintenance and declaration of proper standards of conduct and the upholding of public confidence in the profession.

The panel next considered a caution order. The panel concluded that the misconduct in this case was not at the lower end of the spectrum of impaired fitness to practise and, for the same reasons as in relation to taking no further action, considered that a caution order would be insufficient to satisfy the public interest.

The panel then went on to consider whether a conditions of practice order would be appropriate. The panel noted that this sanction primarily focuses on remedying identifiable areas of concern within a registrant's clinical practice or skills that may require retraining, assessment and supervision. In addition, it requires the willingness of a registrant to respond positively to conditions of practice.

The panel took into account that there was no evidence of general incompetence. The primary issue in this case relates to you dishonestly submitting a plagiarised assignment to the University on 23 October 2012. It considered that this was not a case which involved any issues of lack of clinical skill or any identifiable areas of your practice which required re-training. In light of this, the panel determined that workable and appropriate conditions of practice could not be formulated. Further, the panel determined that a conditions of practice order would be insufficient to mark the seriousness of the misconduct in this case and would

therefore not satisfy the public interest in declaring and upholding the standards of, and maintaining public confidence in, the profession.

Next, the panel considered imposing a suspension order. The panel bore in mind that there is no evidence of repetition of your behaviour since the matters found proved. However, the panel has already determined that your misconduct fell far short of what is expected of a registered nurse and midwife. Although the first instance of misconduct was “technical plagiarism” and on its own did not amount to misconduct, the panel considered that the incidents in charges one, two and three, taken together were sufficiently serious to amount to misconduct. Despite the findings of the original panel some two years ago, there is no evidence of any developed insight into your dishonesty in submitting a plagiarised assignment on 23 October 2012. You have not acknowledged your failings nor provided any evidence of remediation or remorse, and as a consequence there is a risk of repetition of the misconduct.

The panel bore in mind that the misconduct which led to the charges found proved had been serious; that your behaviour brought the reputation of the profession into disrepute; and that it had breached a fundamental tenet of the profession.

Despite being an experienced nurse and midwife, of 17 years, and having been given a number of opportunities to explain your actions and demonstrate insight into your dishonesty, you have chosen not to do so. You have had two years since the original substantive hearing in May 2014 to consider your insight, but have put no evidence before this panel. Indeed, at the conclusion of the misconduct and impairment stage this panel provided you with its reasons and gave you overnight to consider what evidence to put before the panel when considering sanction. However, apart from some references, certificates and a letter about your health, you chose not to put anything further before the panel, for example a reflective piece. The panel was concerned by your persistent and

continued failure to accept personal responsibility for your actions and concluded that this demonstrated that there was an underlying attitudinal issue in your case. It was not satisfied that you fully recognised the implications of your misconduct in relation to your dishonesty.

The panel had regard to the testimonials you provided at the sanction stage. It found them to be of limited value for the following reasons:

- Most of them predated your original hearing and thus predated the finding of dishonesty.*
- None of them made it clear whether the author was aware of the allegations you faced.*

The panel noted the contents of the letter dated 3 March 2016 commenting on your health and also the certificates relating to phlebotomy, but none of this helped the panel with regard to your insight into your dishonest behaviour.

The panel had regard to the case of Parkinson v Nursing and Midwifery Council [2010] EWHC in which it was said that nurses found to have acted dishonestly will always be at severe risk of being struck off, particularly where they do not demonstrate remorse, a realisation that the conduct was dishonest and that there would be no repetition. Whilst noting that dishonesty is always serious, the panel recognised that there were different degrees of dishonesty and that your dishonesty was not the most serious. However, it was for personal gain and you did deliberately prevaricate your evidence at the facts finding stage. Although your representative highlighted what he referred to as your remorse and understanding of dishonesty at the fact finding stage, this was before any finding of dishonesty had been made. It was therefore of limited value. Since that finding you have not demonstrated any remorse, nor a realisation that the conduct was dishonest and you have provided no direct evidence that you would not act dishonestly in the future.

In light of this the panel concluded that a suspension order would not be sufficient to protect the public interest because it could not be satisfied that you would not act dishonestly in the future.

The panel then went on to consider whether imposing a striking off order was the proportionate sanction in these circumstances. Whilst the panel had seen no evidence of repetition of the misconduct, it nevertheless considered that there was a risk of such behaviour being repeated for the reasons set out in its determination on impairment.

The panel took into account the key considerations appropriate for a striking off order at paragraphs 70 and 71 of the ISG, the relevant parts of which state:

70.1 Is striking-off the only sanction which will be sufficient to protect the public interest?

70.2 Is the seriousness of the case incompatible with ongoing registration?

70.3 Can public confidence in the professions and the NMC be sustained if the nurse or midwife is not removed from the register?

71 This sanction is likely to be appropriate when the behaviour is fundamentally incompatible with being a registered professional, which may involve any of the following (this list is not exhaustive):

71.6 Dishonesty...

71.7 Persistent lack of insight into seriousness of actions or consequences

Taking account of the paragraphs above and the factors the panel considered in relation to a suspension order, the panel determined that nothing short of striking off order would be sufficient. The panel also concluded that public confidence in the profession would not be maintained if you were not removed from the register. In all the circumstances the panel determined that a striking off order would be the only appropriate order that would be sufficient to protect the public interest

both as regards the maintenance of proper standards, and to uphold the reputation of the profession and its regulator.

The panel has therefore determined to impose a striking off order and directs the

Registrar to strike your name from the register.'

The panel at the previous restoration application decided the following:

'The panel has considered your application for restoration to the NMC register very carefully. It has decided to refuse the application.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that the burden was upon you to satisfy it that you are a fit and proper person who is able to practise safely and effectively as a nurse. It also took account of the NMC restoration guidance which set out the following factors for consideration:

- the extent to which the applicant has demonstrated insight and remediation into the concerns which led to the striking-off order,*
- the period of time since being struck off and any previous restoration application,*
- the applicant's employment history since they were removed from the register,*
- the efforts the applicant has made to keep up to date with professional practice,*
- taking into account the above factors, whether the applicant would be able to practise safely as a nurse, midwife or nursing associate in the future, and*
- whether, in the context of the concerns that led to the previous striking-off order, public confidence in the nursing or midwifery*

professions would be undermined if the applicant was restored to the register. There is a spectrum of concerns which lead to a nurse, midwife or nursing associate being struck off the register. At one end, some cases may be just serious enough to end in a striking-off order. At the other, there may be cases which are so serious that it may be difficult to see how the nurse, midwife or nursing associate could ever be restored to the register.

The panel considered that your written letter of support does not show any insight into the charges found proved at the substantive hearing, neither does it demonstrate the rationale for your actions and understanding of how your actions may have impacted negatively on colleagues and the reputation of the nursing profession. The panel accepted the submissions of Ms Gilchrist that the letter of support contradicts the findings of the original panel.

The panel acknowledged that in your oral evidence you have demonstrated some insight. The panel took into account that you have since completed a postgraduate certificate in Project Management, which requires the use of anti-plagiarism software and were able to explain the actions you would take in the future to avoid plagiarism; such as requesting an extension if circumstances required. Notwithstanding this, the panel was of the view that you have provided limited insight and your written and oral evidence was primarily focused on the clinical skills you have maintained through your employment history. It determined that you did not demonstrate full acceptance of your actions and how this may have impacted negatively on colleagues and the reputation of the nursing profession.

The panel noted that you have provided a comprehensive employment history, which includes working with a care agency, agency work as a Phlebotomist, as well as volunteer work. The panel considered that your current role as a Care Assistant involves providing care for patients. It also

considered that in your employment history you have remained in healthcare positions where you can utilise skills applicable to nursing. The panel determined that the evidence demonstrated that you are a caring and competent healthcare worker. However, the panel determined that there is no information regarding your current activity that is relevant to updating your midwifery practice.

The panel was of the view that there is a high risk of repetition based on the limited evidence of insight, remediation or remorse. The panel decided that there are still public protection concerns as dishonesty is difficult to remediate and you have only demonstrated limited insight into your failings.

The panel was also not satisfied that you had sufficiently reflected on the public interest elements of this case, and how your actions impacted upon colleagues, the nursing profession or the wider public. The panel determined that there has been very limited assurances that you have fully considered the impact of your actions. The panel therefore considered that public confidence in the nursing professions and the NMC as its regulator would be undermined if you were restored onto the NMC register.

Given all of the reasons outlined above, the panel determined that you had not demonstrated that you are a fit and proper person who is able to practise safely and effectively. To permit you to return to the register would not uphold the NMC's overarching objectives of public protection, to promote and maintain public confidence in the professionals regulated under the NMC and to promote and maintain proper professional standards and conduct.

The panel therefore concluded that it was not appropriate that your registration be restored, and it decided to refuse your application. The panel was of the view that further evidence would need to be provided to support the restoration of your

registration.'

Submissions and evidence

The panel took into account the documentary evidence which included your application for restoration, three written references, factual statement, a reflective statement, evidence of Continued Professional Development (CPD) and an independent mentor's report.

The panel had regard to the submissions of Mr Donnelly, on behalf of the NMC, and those made by Ms Stock, on your behalf.

Mr Donnelly outlined the background of the case and the facts that led to the striking-off order. He referred this panel to the previous panel's decision which resulted in your removal from the Register.

Mr Donnelly reminded the panel that it should consider the legal framework set out in three key areas: the Nursing and Midwifery Order 2001 (the Order) (specifically Article 33), guidance from the NMC on decision-making for restoration applications, and relevant case law, particularly *GMC v Chandra* [2018] EWCA Civ 1898.

Mr Donnelly referred the panel to the test set out in Article 33(5) of the Order which, he said, requires the panel to ensure that two conditions are met before approving a restoration application: compliance with Article 9 concerning safe and effective practice, and a determination of whether the applicant is a fit and proper person based on the circumstances leading to their striking-off.

Mr Donnelly submitted that the panel must also consider the overarching objectives of the NMC as outlined in Article 3 of the Order, including protecting the public's health, safety, and well-being, maintaining public confidence in the profession, and upholding professional standards. He said the NMC guidance (App-2A) advises the panel to consider whether you have addressed the reasons for your removal and whether public confidence would be undermined by your reinstatement. Mr Donnelly submitted that given your absence from practice for eight years, the panel must assess your current

capability for safe and effective practice based on relevant evidence such as your employment history and steps you have taken to maintain professional skills.

Mr Donnelly submitted that in the case of *GMC v Chandra*, Lady Justice King highlights that the tribunal must assess the applicant's remorse, insight, and remediation efforts, ensuring the risk of further misconduct is minimised. Mr Donnelly stated that the panel must weigh these considerations against its overarching objectives when making the decision. He further submitted that Lady Justice King also distinguishes between cases of clinical error or negligence and those involving more serious misconduct, such as dishonesty, where remediation may be more difficult.

Mr Donnelly submitted that while the Order addresses both safe and effective practice and fitness to practice, the primary concern in this case is whether you are a fit and proper person for restoration, considering your past dishonesty and risk of recurrence. He said if the panel determines that you are fit for restoration, you must complete a return-to-practise course before being reinstated on the Register.

You provided evidence under affirmation. During cross-examination, you accepted full responsibility for your actions and offered a sincere apology. You explained that, at the time of the incident, you felt embarrassed, ashamed, and guilty. You said that in your cultural context, acknowledging guilt typically involves remaining silent, as speaking out may appear as an attempt to justify one's actions. You said that this cultural norm influenced your initial decision to stay quiet. To understand and address your actions, you sought guidance from a professor/mentor at Strathclyde University (the University) and enrolled on a course on ethics and probity. This reflective process helped you recognise the appropriate professional behaviour you should have displayed and the impact your actions had on colleagues, the profession, and the public. The course also helped you comprehend the seriousness of your misconduct, particularly the dishonesty, and provided strategies for remediation.

You explained that in 2012, you faced significant personal challenges. These challenges adversely impacted your judgment, leading you to act against professional standards, for which you expressed regret. You said that you were not in the right state

of mind and felt confused and overwhelmed as you managed both family responsibilities and academic commitments. This lack of focus contributed to your decision to submit a colleague's work as your own, without anticipating that it would be detected as plagiarism.

You stated that consultations with your mentor/professor, and ethics and probity course provided you with valuable insights into your misconduct and its consequences for the University, your colleague, and the profession. You acknowledged that your actions could have undermined the University's reputation, potentially influencing international student applications and diminishing the perceived value of its degrees. Regarding your colleague, you admitted that your misconduct breached her trust and put her at risk of disciplinary action. Professionally, you recognised that your behaviour could harm the nursing profession's reputation and reduce public confidence in healthcare services. To address these issues, you said you engaged in extensive reading and professional development to reinforce the importance of honesty and integrity.

You explained that you have taken active steps to keep your professional knowledge and skills up to date. You regularly consult with colleagues in the profession and access professional resources and websites. You said the ethics and probity course allowed you to fully understand the severity of your misconduct, confirmed the NMC's findings, and demonstrated how you could have acted differently. You stated that it also made you aware of the impact your actions had on others.

Lastly, you emphasised that you have learned the importance of seeking support in future stressful situations, such as requesting extensions, rather than resorting to dishonest behaviour. You expressed your commitment to preparing adequately for such situations in the future, ensuring sufficient time and resources to meet your professional obligations. You stated that discussions with your professor/mentor and the completion of the ethics and probity course have given you the necessary insight to avoid such misconduct going forward.

Ms Stock provided written submissions and the following is a summary.

Ms Stock stated that since 2022, you have implemented a comprehensive plan for your professional restoration. This plan includes continuous self-reflection, professional reading, ethics and professionalism courses, and guidance from a professional mentor. You have also maintained your skills through CPD and continue to work as an Agency Care worker/Care Coordinator. Additionally, you have reviewed the NMC Code and recognise its importance to your profession.

Ms Stock submitted that during your oral evidence, you took full responsibility for your past misconduct. She said you admitted to acting dishonestly in 2012 by plagiarising a colleague's work and acknowledged that you were untruthful in 2016, where you placed blame on others for your actions. Ms Stock stated that you presented a reflective statement that shows your openness and honesty, highlighting the challenges and vulnerabilities you faced at that time, which contributed to your misconduct.

Ms Stock submitted that your mentor, a professor, reported that you now understand the impact your plagiarism had on your colleague, the university, and the profession. She said you have actively developed insight into your actions and have focused on understanding the significance of honesty and professionalism. She said you have also completed courses on probity and ethics to strengthen your knowledge.

Ms Stock submitted that you have fully remediated your past misconduct through an ongoing journey of reflection, mentorship, and professional development. She said you have demonstrated persistence over the past 12 years, particularly since 2022, in addressing your shortcomings.

Ms Stock said that the references you provided describe you as hardworking and trustworthy, reflecting your honesty and transparency in your professional conduct.

Ms Stock submitted that despite the long period since your registration with the NMC, it is argued that the time lapse should not be the decisive factor in evaluating your fitness to practise. Instead, the demonstrated insight, remorse, and efforts to remediate your misconduct should be the main considerations.

Ms Stock said that the panel is assured that the risk of repetition is minimal due to the steps you have taken to prevent future misconduct.

Ms Stock submitted that your application for restoration to the Register is supported by your full acceptance of your past misconduct. She said you have shown an understanding of the consequences your actions had on patients, colleagues, and the wider public. Further, she said your reflective statement demonstrates your awareness of the impact your dishonesty had on the nursing profession and public trust.

In conclusion, Ms Stock submitted that you have addressed the panel's concerns from past hearings through diligent work and developed insight, engaged with a mentor, and committed to further training. She said your efforts to remediate your misconduct are evident, and you have expressed genuine remorse for your actions.

Ms Stock submitted that you have fulfilled the necessary actions required for your restoration application. She said your continued commitment and demonstrated insight support the argument that you should be allowed to return to practice.

Ms Stock submitted that based on the evidence of your remorse, insight, and substantial efforts to rectify your past misconduct, it is recommended that you be restored to the Register.

The panel accepted the advice of the legal assessor.

The legal assessor referred the panel to the test provided in Article 33(5) of the Order. Firstly, you must satisfy the panel that you satisfy the requirements of Article 9(2)(a) (approved qualification and prescribed education, training and experience) and Article 9(2)(b) (capable of safe practice). Secondly, you must satisfy the panel whether, having regard in particular to the circumstances which led to the making of the striking-off order in 2016, you are a *“fit and proper person to practise as a registered nurse”*. The legal assessor advised the panel that it is for you to satisfy the panel of these matters and it is for the panel to use its own independent judgment as to whether it is so satisfied.

Decision on the application for restoration

The panel has considered your application for restoration to the Register very carefully. It has decided to allow the application subject to your successful completion of a return to practice course.

In reaching its decision the panel recognised its statutory duty to protect the public as well as maintain public confidence in the reputation of the profession, which includes the declaring and upholding of proper professional standards. The panel bore in mind that to allow the application it must be satisfied that you are a fit and proper person who is able to practise safely and effectively as a nurse.

The panel thoroughly reviewed your reflective statement and listened to your oral evidence. Based on this, it concluded that you have shown significant improvement in your insight. You now fully recognise the impact of your past misconduct on your colleagues, the university, the nursing profession, and the public's trust in nursing as a whole. In all the circumstances the panel was satisfied that your insight has developed sufficiently to be reinstated onto the Register.

The panel acknowledged the considerable time that has passed since you last practised. However, it did not view this as a concern and determined that the lapse of time does not present an issue.

The panel also noted that you have maintained meaningful employment since the last hearing, currently working as an Agency Care worker/Care Coordinator. It reviewed a positive reference from your colleague, who stated:

'I met Ester in 2017, and she has been consistently honest, hardworking, a good timekeeper, always willing to learn, and loyal. As her direct supervisor, I am aware of Ester's eagerness to learn and her ability to manage complex care clients. She is a strong team player with excellent communication skills, likely stemming from her experience and expertise as an NHS midwife. I firmly believe Ester Fabowale has fully rehabilitated.'

The panel recognised your efforts to stay current with your professional practice. In your reflective statement, you noted:

'I continue to subscribe to a journal and, as a member of the Royal College of Midwives, I receive the RCM magazine regularly. I have attended online events such as the Maternity and Midwifery Forum and frequently visit the NMC website to update my skills and knowledge, ensuring I stay informed on NICE guidelines.'

Furthermore, the panel acknowledged that in your role as an Agency Care worker/Care Coordinator, you adhere to relevant policies, procedures, and standards of care. However, it recognised that the original concerns did not pertain to your clinical practice. The panel then considered whether you could practise safely as a nurse or midwife. It noted that there was no suggestion that you could not.

Finally, the panel evaluated whether restoring you to the Register would undermine public confidence in the nursing and midwifery professions, given the nature of the concerns that led to your previous striking-off order. It acknowledged that your misconduct was serious but also recognised that it is capable of being remediated. Given your otherwise unblemished 17-year career and the time elapsed since the misconduct, the panel concluded that the public would not be concerned to see you reinstated on the Register.

In determining to grant your application for restoration the panel bore in mind that you have not practised as a registered nurse or midwife since 2014 and that you no longer meet the requirements for registration with the NMC on this basis. However, the panel determined to allow your application for restoration subject to your completion of a Return to Practice course and paying the prescribed fee which satisfies the requirements of Article 19(3) and Article 33(7)(a). This article states:

"The Council may by rules require persons who have not practised or who have not practised for or during a prescribed period, to undertake such education or training or to gain such experience as it shall specify in standards."

"(7) On granting an application for restoration, the Committee—

(a) shall direct the Registrar to register the applicant in the relevant part of the register on his satisfying any requirements imposed under paragraph (6) and on payment of the prescribed fee; and”

That concludes this determination.

This decision will be confirmed to you in writing.